

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5291 OF 2018

Piraji s/o Narayan Patil and anr. .. Petitioners

Versus

The Collector, Nanded,
Taluka and District Nanded and ors. .. Respondents

Mr P.G. Godhamgaonkar, Advocate for petitioners
Mr A.B. Girase, Government Pleader for respondents no.1, 2 and 4

**CORAM : R.M. BORDE AND
A.M. DHAVAL, JJ.**

DATE : 6th June 2018

PER COURT

1. The petitioners are objecting to the notice dated 22.5.2018 issued by respondent no.3, for conducting elections of Sarpanch and Upa-Sarpanch of village panchayat. It is informed that the person holding the office of Sarpanch passed away on 19.4.2018 and as such, the post has fallen vacant. It is the contention of the petitioners that the post of Upa-Sarpanch has not fallen vacant and as such, there is no need to conduct election of Upa-Sarpanch. It is contended that general elections were held in November 2015 and the term of office bearers would be upto November 2020. It is further informed that there is no elected candidate belonging to O.B.C. category available and as such the exercise undertaken by the respondents of holding the meeting for filling the vacancy of the post of Upa-Sarpanch would be futile.

2. Learned Government Pleader appearing for respondent-State informs that the reference to the election of Upa-Sarpanch in the notice is an error and the meeting is not scheduled for filling the vacancy in the office of Upa-Sarpanch and the election for the post of Upa-Sarpanch will not be held in the meeting convened today. Section 43 of the

Maharashtra Village Panchayats Act provides that “any vacancy of which notice has been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, [confirmation of no confidence motion,] absence without leave or removal of a Sarpanch or Upa-Sarpanch, shall be filled, by the election of a Sarpanch or Upa-Sarpanch, who shall hold office so long only as Sarpanch or Upa-Sarpanch, in whose place he has been elected would have held office if the vacancy had not occurred. It is further provided that the post of the Sarpanch or Upa-Sarpanch, as the case may be, fallen vacant under this sub-section shall be filled in within thirty days from the date of such vacancy”.

3. It is not a matter of dispute that there is vacancy in the office of Sarpanch, which has fallen vacant on 19.4.2018 on account of demise of Sarpanch. The respondents are bound to fill the vacancy within a period of thirty days of occurrence of vacancy. No fault can be attributed to the respondents for convening the meeting for filling the vacancy of Sarpanch. So far as the contention of the petitioners that there is no candidate of O.B.C. is concerned, the Presiding Officer conducting the elections shall look into the aspect and take appropriate decision. Since seat is prescribed for O.B.C. category, the candidate belonging to O.B.C. category shall have to be elected. The factual dispute raised by the petitioners in the instant petition need not be gone into in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. The petition being devoid of substance, stands rejected.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)